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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,039	05/06/2005	Paulo Do Rosario	0678-1001	2398

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YOUNG & THOMPSON
209 Madison Street
Suite 500
Alexandria, VA 22314

EXAMINER

JACYNA, J CASIMER

ART UNIT	PAPER NUMBER
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3754

NOTIFICATION DATE	DELIVERY MODE
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09/02/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

Office Action Summary	Application No. 10/534,039	Applicant(s) DO ROSARIO ET AL.	
	Examiner J. Casimer Jacyna	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13, 15-26, 32 and 33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13, 15-22, 24-26, 32 and 33 is/are rejected.
- 7) ☒ Claim(s) 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 13, 15-18, 21, 22, 24, 25, 32 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Goda 3,741,444. Goda discloses a dispensing device including a reservoir 10, an ejection assembly 20 that is supported on a wall 33 of the reservoir, an actuating member 40 that emerges from a central opening on the top of the reservoir at 42, the actuating member 40 including a push-button 44 with a vertical actuating direction on the central axis of the reservoir 10, a passage in the actuating member 45, a connecting member which is a flexible connecting tube 60 with the first end of the connecting member connected to the actuating member at 50 and a second end of the connecting member 60 connected to an outlet member 81 with the tube 60 being deformable and not transmitting any force as shown by the coils shown in 60 within the reservoir 10 in figure 1, wherein the first end at 50 extends in a different direction than the second end at 81 wherein since 81 is adjustable by the user orientation of arm 99 and can be adjusted to a position that does not extend in the same vertical flat plane as a line directly connecting the actuating member and the outlet member wherein the outlet member 81 is fixedly connected to the reservoir via arm 99 connected to bolt 98 which is attached to 70 that is fixed to the reservoir at 74. In regard to claim 15, Goda discloses a female and a male connector attached to the flexible tube connecting member 60 with female connector 50 attached to the actuating member and a male connector surrounding the end of 60 and inserted into 81 as shown in figure 1. In regard to claims 32 and 33, Goda additionally discloses a housing 33 and 10, a

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reservoir as is the interior of 10, a pump 40, a dip-tube 61, an outlet sleeve 50 with a horizontal connection into which 60 is inserted adjacent 52, and a nozzle 81 that is arranged horizontally along 99 and is connected to the housing via 99 at 70 as claimed.

3. Claims 19, 20 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goda 3,741,444 in view of Lee 2003/0160070. Goda discloses a dispensing device substantially as claimed but does not disclose the reservoir to be non-circular. However, Lee teaches another pump dispenser that is non-circular as shown in figures 4 and 7. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the reservoir of Goda could be non-circular as, for example, taught by Lee because one of ordinary skill in the art would have considered the rectangular and oval shapes of the Lee reservoir as shown in figures 4 and 7 as art recognized equivalents that would work equally well for the Goda reservoir with a high probability of success and would have been an obvious variation to try in the Goda dispenser.

4. Claims 13, 15-22, 25, 26, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell 2,655,287 in view of Goda 3,741,444. Campbell discloses a dispensing device including a housing that contains a reservoir 10, an ejection assembly that is supported on a wall 40 of the reservoir, an actuating member 44 with portion 60 of the actuating member 44 emerging from an opening on the top of the reservoir adjacent 48, the actuating member 44 including a push-button adjacent 62 with a vertical actuating direction, a passage in the actuating member 52, a flexible tube 14 connected to the sleeve 107 at a first end and a horizontally arranged nozzle

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outlet member 16 as shown in figure 1 connected at a second end 108 of tube 14 wherein the nozzle 20 is horizontally connected to various fixtures 26 as shown in figure 1 wherein at least some of the fixtures will be oriented in a direction that is different from the horizontal sleeve 107 as claimed. Consequently, Campbell discloses a pump dispensing device substantially as claimed but does not disclose the actuator to be aligned along the central axis of the reservoir nor the nozzle to be fixed to the reservoir. However, Goda teaches another pump dispenser having the actuator 40, 44 aligned along the central axis of the reservoir 10 for the purpose balancing the force and weight distribution of the device and having a flexible hose connected nozzle fixed to the reservoir via frame 99 for the purpose of assisting a user in supporting the nozzle. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the dispenser of Campbell with a centrally located actuator and an outlet member fixed to the reservoir as, for example, taught by Goda in order to balance the force and weight distribution of the device and to assist a user in supporting the nozzle. In regard to claim 19, the reservoir is oval as shown in figure 2.

5. Applicant's arguments filed 7/26/2010 have been fully considered but they are not persuasive. Applicant contends that the actuating member of Goda does not include a passage. As claims element 40 of Goda reads on the claimed actuating member wherein 45 of Goda is a passage as claimed. Applicant contends that because the connecting member 60 of Goda can be pushed into and out of the reservoir it can take a position where it does not read on the claim language. However, as shown in figure 1, it can also take a position where it does read on the claim language. As long as Goda is

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disclosed as being capable of a position or arrangement as shown in figure 1 that reads on the claim language it legitimately rejects the claims even if it can be arranged in a position that does not read on the claims. As shown in figure 1 outlet element 81 can be attached or fixed to 99 even though it is removable, it has a rest position where it is attached to or fixed to 99. Also note that the dispenser of Goda could be used in the figure 1 position by placing a container under nozzle 82 in figure 1 and dispensing into the container while 81, 82 are attached to 99. Element 99 is fixedly attached to the reservoir through bolt 98 and the threads at 73 even though 99 can adjust and swing about an axis, bolt 98 and the threads at 73 on the bottom of 70 constitute a fixed connection to reservoir 10 as claimed.

Lee is only relied on for teaching the shape of the reservoir. Therefore, whether or not Lee teaches affixed outlet member or other details disclosed in Goda is not material.

Campbell discloses a passage 52 in the actuating member 44. Goda teaches the concept of fixing the outlet member to the reservoir.

6. Claim 23 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-4889. The examiner can normally be reached on Mon. thru Fri. 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Casimer Jacyna/
Primary Examiner, Art Unit 3754

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